

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
TERRY VITULLI

MEMORANDUM AND ORDER

Plaintiff,
-against-

CV 05-5136 (LDW)

THE PRUDENTIAL INSURANCE
COMPANY

Defendants.
-----X

APPEARANCES:

FRANKEL & NEWFIELD, P.C.
Attorneys for Plaintiff
585 Stewart Avenue
Garden City, N.Y. 11530

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP
Attorneys for Defendant
3 Gannett Drive
White Plains, N.Y. 10604

WEXLER, District Judge

Presently before the court is the objection of Plaintiff to a discovery ruling of Magistrate Judge Michael Orenstein, dated March 17, 2006 regarding Plaintiff's request to conduct expert discovery. The Magistrate Judge ruled that the request for discovery on the issue of a conflict of interest that may have influenced the claim handling is denied.


Pursuant to Rule 72 of the Federal Rules of Civil Procedure this court shall modify or set aside any part of the order appealed from that is "clearly erroneous or contrary to law." FRCP 72(a).

The court has the authority to limit discovery in order to expedite adjudication. In order to expand discovery and go outside the administrative record the plaintiff must show that there is good cause. "A conflict of interest does not *per se* constitute 'good cause' to consider evidence outside the administrative record" DeFelice v. American Internat'l. Life Assurance Co. of N.Y., 112 F.3d 61 (2d Cir. 1997)' see also Anderson v. Sotheby's Inc., 2005 WL 1412965 *2 (S.D.N.Y. June 13, 2005). In setting forth her assertion that there was a conflict of interest that influenced the claim handling, making further discovery necessary, the plaintiff failed to show there was a reasonable chance that discovery would likely result in some finding that the claim was influenced by a conflict of interest. The plaintiff did not provide adequate evidence to show her case was distinguishable from those cases in which the denial of discovery was upheld.

It is likely that the information relied upon by the decision makers, with regards to the claim handling, will be reflected in the administrative record. Discovery therefore being limited to the administrative record is not likely to hamper the plaintiff's ability to properly develop her case.

This court has reviewed Plaintiff's objections and the order of Magistrate Judge Orenstein and concludes that the order appealed from should be affirmed. Accordingly, Plaintiff's objections are hereby overruled and the Order of Magistrate Judge Orenstein is affirmed.

SO ORDERED.


LEONARD D. WEXLER
UNITED STATES DISTRICT JUDGE

Dated: Central Islip, New York
July 20, 2006